

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

McNeill, William and McNeill, Lisa

(b) County of Residence of First Listed Plaintiff Bennett County, South
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Cotton, Bledsoe, Tighe & Dawson, P.C.
500 W. Illinois, Suite 300
Midland, TX 79701**DEFENDANTS**

Loewen, Willie and Loewen Eva

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ PTF ☐ DEF
- Citizen of Another State ☒ 2 ☒ 2
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
- Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
1332(a)(1)Brief description of cause:
Breach of Contract**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
1,500,000.00CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/10/2024

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**WILLIAM MCNEILL AND LISA
MCNEILL**

**Plaintiffs,
v.**

**WILLIE LOEWEN AND EVA
LOEWEN**

Defendants.

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CIVIL ACTION NO: _____

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE DISTRICT JUDGE:

COME NOW, WILLIAM MCNEILL AND LISA MCNEILL, Plaintiffs, and files this, their Original Complaint against Defendants, WILLIE LOEWEN AND EVA LOEWEN, and respectfully shows the Court as follows:

**I.
PARTIES**

1. Plaintiffs WILLIAM MCNEILL AND LISA MCNEILL (“the McNeills” or “Plaintiffs”), are individuals and residents of South Dakota.

2. Defendants WILLIE LOEWEN AND EVA LOEWEN (“the Loewens” or “Defendants”), are residents of the State of Texas transacting business in New Mexico. They may be served at 112 CR 319, Seminole, TX 79360 or wherever they may be found.

**II.
JURISDICTION AND VENUE**

3. Jurisdiction is proper because of diversity of citizenship pursuant to 28 U.S.C. § 1332 (a)(1). The amount in controversy exceeds \$75,000.00. There is complete diversity of citizenship between the parties as Plaintiffs and Defendants are domiciled in different states.

4. Venue is proper in this district because it is the judicial district in which a substantial part of events or omissions giving rise to the claim occurred, and a substantial part of the property that is the subject of the action is situated. 28 U.S. § 1391(b)(2).

III.

FACTUAL BACKGROUND OF CLAIMS

5. The McNeills entered into a contractual relationship with the Loewens to sell them the McNeill Farm (described in Exhibit A to the New Mexico Ranch Purchase Agreement). In the New Mexico Ranch Purchase Agreement (the "Contract"), which is attached as Exhibit 1, the Loewens agreed to provide money, as well as an agreement for the McNeills the right to graze livestock, at no charge to the McNeills, on up to three irrigated circles of wheat owned by the Loewens, or any entity thereof, for five years during the months November 1 to April 15.

6. The Lowens accepted the McNeill Farm and became bound to pay the McNeills and allow them to graze livestock on up to three irrigated circles of wheat for five years from November 1 to April 15, which was to begin in 2022. However, the Loewens have not allowed the McNeills to graze livestock on any of the irrigated crop circles on any of the properties the last two years and, upon information and belief, will refuse to allow in the future.

7. Despite the Loewen's acceptance of the McNeill farm, a portion of the debt remains unpaid, namely the right to graze livestock. The McNeills seek recovery of the debt still owed.

IV.

BREACH OF CONTRACT

8. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

9. There exists a valid, enforceable contract between Plaintiffs and Defendants.

10. Plaintiffs are the proper parties to sue for breach of contract because they are parties to the contract.

11. Plaintiffs performed their contractual obligations by providing the McNeill Farm.

12. Defendants breached the contract by failing to pay the entire amount owed for the the McNeill Farm, namely the right to graze livestock on three irrigated crop circles and will likely refuse in the future.

13. As a result of Defendants' breach, Plaintiffs have suffered monetary damages and will continue to suffer monetary damages in the future as there are still three years of grazing rights remaining under the contract, as well as expenses, attorneys' fees, and pre- and post-judgment interest as allowed by law under the Contract.

V.
QUANTUM MERUIT

14. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

15. In the alternative, Plaintiffs seek recovery in *quantum meruit* of the reasonable value of the right to graze livestock on three irrigated crop circles.

16. Plaintiffs provided the McNeill Farm to Defendants.

17. Defendants accepted the McNeill Farm and the benefits of the McNeill Farm. The McNeill Farm was accepted under the circumstances that they were to pay a monetary sum as well as give the McNeills the right to graze livestock on three irrigated crop circles for five years.

18. Defendants have been unjustly enriched by their acceptance of the McNeill Farm without full payment to Plaintiffs.

VI.
ATTORNEY'S FEES

19. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.

20. By reason of Defendants failure and continual refusal to allow Plaintiffs to graze livestock on three irrigated crop circles, Plaintiffs have been forced to employ the services of Cotton, Bledsoe, Tighe & Dawson, P.C. to represent them in the present lawsuit. In exchange for its services, Plaintiffs have agreed to pay their counsel reasonable attorneys' fees for the prosecution of this action through trial and any necessary appeals. Plaintiffs are therefore entitled to recover their reasonable attorneys' fees incurred in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, WILLIAM MCNEILL AND LISA MCNEILL, pray that Defendants WILLIE LOEWEN AND EVA LOEWEN, be cited to appear and answer, and that on final trial the Court award Plaintiffs judgment against the Defendants as follows:

- (a) actual damages for being deprived of the right to graze cattle for the five years allowed under the contract;
- (b) pre and post-judgment interest as allowed by law;
- (c) reasonable and necessary attorneys' fees;
- (d) court costs; and
- (e) such other and further general relief to which Plaintiffs may be justly entitled.

Respectfully submitted:

By: 

Jared M. Moore
jmoore@cbtd.com
Cassie J. Bible
cbible@cbtd.com

OF

COTTON, BLEDSOE, TIGHE &
DAWSON, P.C.

P.O. Box 2776

Midland, Texas 79702-2776

(432) 684-5782

(432) 684-3137 (Fax)

ATTORNEYS FOR PLAINTIFFS